

# ARKANSAS SUPREME COURT

No. CR 06-546

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered    October 12, 2006

RONALD O'NEAL  
a/k/a RONALD DEE O'NEAL  
Appellant

v.

STATE OF ARKANSAS  
Appellee

*PRO SE* MOTIONS FOR  
PRODUCTION OF DOCUMENTS  
AND FOR SCIENTIFIC TESTING  
[CIRCUIT COURT OF PULASKI  
COUNTY, CR 2001-2658, HON.  
BARRY A. SIMS, JUDGE]

APPEAL DISMISSED; MOTIONS  
MOOT

## PER CURIAM

Appellant Ronald O'Neal, also known as Ronald Dee O'Neal, was found guilty of capital murder and sentenced to life imprisonment without parole. This court affirmed. *O'Neal v. State*, 356 Ark. 674, 158 S.W.3d 175 (2004). Subsequently, appellant timely filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition and this court affirmed. *O'Neal v. State*, CR 04-953 (Ark. September 29, 2005) (*per curiam*).

In 2006, appellant filed in the trial court a *pro se* petition for writ of *habeas corpus* pursuant to Act 1780 of 2001, codified at Ark. Code Ann. §§ 16-112-201–207 (Repl. 2006). In his petition, appellant maintained, in part, that he was actually innocent of the murder and sought scientific testing of certain evidence obtained during the investigation. The trial court denied the petition without a hearing, and appellant, proceeding *pro se*, has lodged an appeal here from that order.

Now before us are appellant's *pro se* motions for production of documents and for "medical and/or scientific experts for testing or comparrisons [sic]." Each of these motions contain multiple sub-parts requesting numerous types of relief.<sup>1</sup> We need not consider these motions as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward. Accordingly, we dismiss the appeal and hold the motions moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

Act 1780 of 2001 provides that a writ of *habeas corpus* can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. *See* Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006) and sections 16-112-201–207; *see also Echols v. State*, 350 Ark. 42, 84 S.W.3d 424 (2002) (*per curiam*) (decision under prior law). Act 1780 was amended by Act 2250 of 2005, and appellant filed his petition after the effective date of the amendments to the act.

As revised, there are a number of predicate requirements that must be met under Act 1780 before a circuit court can order that testing be done. *See* sections 16-112-201–203. Of significant

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<sup>1</sup>The motion for production of documents seeks audio and video tapes of appellant's confession to the crime, seeks the prosecutor's criminal investigation file of Carolyn Staley, the former Pulaski County Circuit Court Clerk, regarding the voter registration data base and seeks medical records concerning his ability to lift heavy weights. In a sub-part entitled "motion for preliminary injunction," appellant seeks medical records concerning his hearing loss and issuance of a petition for writ of *habeas corpus ad testificatum* to compel certain persons to explain the "Medical Jargon" contained in those medical records.

The motion for medical experts contains the following three sub-parts: motion for independent forensic DNA testing of hair found in appellant's van; motion for appointment of an independent pathologist to determine the victim's cause of death; motion for appointment of a medical expert to determine appellant's ability to lift heavy weights and for an independent medical examination by an "expert physician."

importance in the instant matter, the act requires a *prima facie* showing of identity as an issue during the investigation or prosecution when a petitioner contends that he is entitled to post-trial scientific testing on the ground of actual innocence. Section 16-112-202(7). Further, the scientific testing to be sought must establish petitioner's actual innocence. Section 16-112-201(a)(1); *see also Graham v. State*, 358 Ark. 296, \_\_\_ S.W.3d \_\_\_ (2004) (*per curiam*) (decision under prior law).

Here, appellant confessed to the victim's murder when questioned by police. At trial, the confession was introduced into evidence. Although appellant did not testify on his own behalf, his defense was that the victim's murder was accidental rather than deliberate and premeditated and that there was insufficient substantial evidence to find appellant guilty. In his original Act 1780 petition appellant claimed for the first time that he did not kill the victim. He argued that his confession was contrived with the police in a scheme to solve the victim's murder as an "off-set" of any potential charges against him for being a felon in possession of firearms and for parole violation.

Through this explanation appellant now claims that he is actually innocent of the victim's murder thus placing the identity of the perpetrator in question. However, we find that appellant failed to make a *prima facie* showing that identity was an issue during the investigation or prosecution by virtue of appellant's confession and failure to attack the confession at trial. Appellant only now recants his confession in order to ostensibly meet all prerequisites to pursue a petition under Act 1780, but such recantation does not negate appellant's prior admissions to the police and does not make a *prima facie* showing that identity was at issue.

Moreover, appellant seeks DNA testing of the hair found in appellant's van. At trial, a witness testified that the hair was microscopically similar to the victim's hair but no DNA testing was conducted on the hair. However, scientific testing of this hair would not establish appellant's

actual innocence as the hair was not the only evidence of appellant's guilt. On direct appeal, this court found substantial evidence to support appellant's conviction.<sup>2</sup>

Additionally, the act now requires that the petitioner identify a theory of defense that is not inconsistent with the affirmative defense presented at the trial and would establish the actual innocence of the petitioner. Sections 16-112-202(6)(A) and (B). Here, appellant's current defense of innocence is wholly inconsistent with the affirmative defense he presented at trial that the victim's murder was accidental.

Finally, we note that the trial judge treated appellant's original petition as one seeking a writ of *habeas corpus* pursuant to section 16-112-103 and not Act 1780. Appellant specifically sought DNA testing of evidence, thus the petition should have been considered pursuant to the requirements of sections 16-112-201–207, regardless of whether the majority of the points argued were not the proper basis of a petition for writ of *habeas corpus* under Act 1780.<sup>3</sup> As the trial judge reached the

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<sup>2</sup>Other evidence supporting appellant's conviction included carpet fibers found in the trash can into which the victim's body was stuffed. These fibers matched carpet found in appellant's van. Further, the victim's hair was obtained from this carpet. Appellant does not appear to challenge or seek additional testing of the carpet fibers.

<sup>3</sup>Appellant's original petition contained the following eight points as a basis for relief: (1) he is actually innocent of the crime to which he confessed; (2) he was denied his hearing aids, thus causing him to give incorrect responses during his interrogation by the police and preventing him from assisting his counsel at trial, which violated his due process rights; (3) his confession was not made knowingly, voluntarily or intelligently as it was the result of coercion; (4) his mental competence evaluation erroneously failed to address his hearing loss as a defect; (5) the jury was "illegally constituted" as a result of the Pulaski County Circuit Court Clerk's failure to properly maintain the voter registration data base thus causing the jury selected to not represent a fair cross-section of the community; (6) he is entitled to DNA testing of the hair found in his van; (7) he is entitled to the appointment of an independent forensic pathologist to reexamine all evidence and determine the cause of death of the victim and whether the victim had been sexually assaulted; (8) he is entitled to the appointment of an "medical physician expert" to conclude that appellant was incapable of lifting the concrete block attached to the trash can in which the victim's body was recovered from the Arkansas River.

In his brief to this court, appellant additionally contends that newly discovered evidence reveals that a witness saw the victim alive and talking with appellant on the approximate date of

right decision albeit for the wrong reasons, we can still affirm his decision. *Jones v. State*, 347 Ark. 409, 64 S.W.3d 728 (2002).

Appellant failed to make a *prima facie* showing that identity was an issue during the investigation or prosecution. He further failed to show that the DNA testing sought would prove his actual innocence. Also, appellant failed to present a defense consistent with the defense used at trial. As appellant failed to demonstrate a legitimate basis for the writ, the appeal is dismissed.

Appeal dismissed; motions moot.

Brown, J., not participating.

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her death. Appellant did not make this argument in his original Rule 37.1 petition. It is well-settled that we will not consider an argument raised for the first time on appeal. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998).